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Recommended Citation

De Armas, Marcel. "Misleadingly Green: Time to Repeal the Ethanol Tariff and Subsidy for Corn." *Sustainable Development Law & Policy*, Spring 2007, 25, 74.

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MISLEADINGLY GREEN:

TIME TO REPEAL THE ETHANOL TARIFF AND SUBSIDY FOR CORN

By Marcel De Armas*

The United States is recognizing the value and importance of energy diversification, but it may also be creating greater environmental harm in the process.¹ If America decreases its dependence on foreign oil it will create greater economic security for itself, reduce its current account deficit, provide less financing for tyrannical leaders and terrorists with American petro-dollars, and improve its environmental credentials.² To reduce America's craving for oil, the government encourages domestic ethanol production; the United States is behind only Brazil, the world's largest producer of ethanol, and combined the two produce over 70 percent of the world's ethanol.³ Currently the U.S. domestic ethanol industry is growing as a result of alternative fuels becoming politically popular, and the addition of a subsidy and tariff applied to ethanol.⁴ However, arguably the ethanol tariff and subsidy do not provide any substantial environmental benefits for the United States or the world.⁵

The United States grants a 54 cent tax credit for each gallon of ethanol in a qualified mixture, which is a mixture of alcohol and gasoline.⁶ Additionally, the government provides extra protection to the ethanol industry from foreign competition by imposing a 2.5 percent *ad valorem tax* and 14.27 cents per liter tax on imported ethanol from countries with normal trade relations.⁷ Proponents of the tariff argue that it protects and promotes a domestic industry, prevents the government from subsidizing foreign ethanol production, and encourages the development of cleaner technology.⁸

On closer inspection, ethanol produced from corn may generate as much pollution as the fossil fuels it replaces and may create new environmental problems.⁹ Due to the growing demand for ethanol, farmers intend to plant an estimated 88 million acres of corn this year, the equivalent of covering Florida, Georgia, and South Carolina in corn.¹⁰ In addition, farmers will likely reduce crop rotation and replant fallow fields, which will increase the use of fertilizers and insecticides and result in greater pollution run-off into our water system.¹¹ To replace the United States' current dependence on gasoline (140 billion gallons per year) would take approximately 350 million acres of corn (assuming 400 gallons per acre per year of ethanol).¹² Since greater ethanol production results from plants with higher cellulose content, switchgrass or sugar cane should be used to produce ethanol, and thus, minimize the amount of land cultivated.¹³

Besides having a higher cellulose content, sugar cane offers several advantages over corn in the production of ethanol. First, unlike corn, farmers plant sugar cane once every four to seven

years but harvest it yearly resulting in less soil erosion. Second, sugar cane requires less fertilizers since it can obtain some of its nitrogen from the air. Third, the energy to power the transformation from sugar cane to ethanol comes from burning the sugar cane's waste product and not from oil, gas, or the electrical grid as with corn.¹⁴ Unfortunately with our current technology, even if the United States produced most of its ethanol from sugar cane or other crops with higher cellulose content it still would require excessive amounts of land for cultivation.¹⁵

To protect its environment the United States should eliminate the current ethanol tariff and subsidy, or at least focus the subsidy on crops with high cellulose contents. In particular, eliminating the tariff on ethanol will promote the growth of an ethanol distribution system because more imports would enter the country increasing the market for ethanol.¹⁶ In addition, eliminating the ethanol tariff would increase the demand for sugar cane, and thus, reduce third world countries' excess supply. As a result, the price of sugar cane would increase providing additional revenue to the third world sugar cane producers.¹⁷ The additional sugar cane revenue entering these third world countries could foster the development of a middle class interested in protecting their own environment and promoting sustainable development.¹⁸ Finally, the elimination of the tariff and subsidy could rekindle the trade negotiations for a Free Trade Area of the Americas that stalled over agriculture and service industry differences between Brazil and the United States.¹⁹

Even if America could end its thirst for foreign oil by using crops with higher cellulose content and allowing greater imports of ethanol from abroad, it still should encourage the development of alternative renewable energies to ensure its economic, national, and environmental security by ending its addiction to foreign oil.²⁰ The United States needs to seek alternative renewable energies, in addition to raising mileage standards for vehicles, creating a carbon tax or tradable carbon market to discourage the burning of fossil fuels in the development of ethanol and other energy intensive industries, and end or refocus its subsidy to more efficient crops.²¹ These steps would allow for American oil dollars to end up in the pockets of Americans and its neighbors to the North and South rather than in the pockets of potentially tyrannical regimes or hostile terrorists.²²

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ENDNOTES: MISLEADINGLY GREEN *continued from page 25*

¹ See 42 U.S.C. § 8801; *Leaders, The Greening of America*, ECONOMIST, Jan. 27-Feb. 2, 2007, at 9 [hereinafter *Greening America*]; see also Brian R. Farrell, *Fill 'Er Up With Corn: The Future of Ethanol Legislation in America*, 23 J. CORP. L. 373, 377 (1998).

² See C. Boyden Gray & Andrew R. Varcoe, *Octane, Clean Air, and Renewable Fuels: A Modest Step Toward Energy Independence*, 10 TEX. REV. L. & POL. 9, 10-11 (2005).

³ See RENEWABLE FUEL ASSOCIATION, RENEWABLE ENERGY SERVICES: AN EXAMINATION OF U.S. AND FOREIGN MARKETS, UNDER SECTION 332(G) OF THE TARIFF ACT OF 1990 7 (2005) (submitted testimony of Larry Schafer), <http://www.ethanolrfa.org/objects/documents/66/itctestimony041905.pdf> (last visited Apr. 5, 2007) [hereinafter RFA].

⁴ See 26 U.S.C. § 40; HTSUS § XXII Ch. 99 (2007); HTSUS § IV Ch. 22 (2007); Briefing Green America: *Waking up and Catching up*, ECONOMIST, Jan. 27-Feb. 2, 2007, at 22-23; RFA, *supra* note 3, 1-3.

⁵ See *Greening America*; *supra* note 1, at 9.

⁶ See 26 U.S.C. § 40(b).

⁷ See HTSUS § XXII Ch. 99 (2007); HTSUS § IV Ch. 22 (2007).

⁸ See *National Corn Growers Association v. Baker*, 840 F.2d 1547, 1549 (Fed. Cir. 1988).

⁹ Cf. Europe, *Burned by the Sun*, ECONOMIST, Feb. 24-Mar. 2, 2007, at 64.

¹⁰ See Marianne Lavelle & Bret Schulte, *Is Ethanol the Answer?*, US NEWS, Feb. 4, 2007.

¹¹ Cf. Marcel De Armas, *Changing Tides: The Need for New Legislation to Prevent Algae Blooms*, 7 SUSTAINABLE DEV. L. & POL'Y 44, 44 (Fall 2006).

¹² See Milton Maciel, *Ethanol from Brazil and the USA*, ASPO-USA/ENERGY BULLETIN (Oct. 2, 2006), available at <http://www.energybulletin.net/21064.html> (last visited Feb. 22, 2007).

¹³ See Christopher Joyce, *Study Backs Ethanol as Gasoline Substitute*, NPR (Jan. 26, 2006), available at <http://www.npr.org/templates/story/story.php?storyId=5173420> (last visited Feb. 20, 2007).

¹⁴ See Maciel, *supra* note 12.

¹⁵ See Lavelle & Schulte, *supra* note 10; Maciel, *supra* note 12.

¹⁶ See Lavelle & Schulte, *supra*, note 10; Cf. Rick Newman, *The Ethanol Mirage: What is GM Talking About?*, U.S. NEWS, Apr. 25, 2006, available at http://www.usnews.com/usnews/general_ssi/content/money_business/MT/060425/the_ethanol_mirage_what_is_gm.htm (last visited Apr. 15, 2007).

¹⁷ See Gray & Varcoe, *supra* note 2, at 12.

¹⁸ See The Americas, *Fuel for Friendship*, ECONOMIST Mar. 3-Mar. 9, 2007, at 44 [hereinafter *Fuel for Friendship*].

¹⁹ See Kevin C. Kennedy, *The FTAA Negotiations: A Melodrama in Five Acts*, 1 LOY. INT'L L. REV. 121, 130-31 (2004).

²⁰ See *Greening America*, *supra* note 1, at 9; Lavelle & Schulte, *supra* note 10.

²¹ Lavelle & Schulte, *supra* note 10.

²² See *Fuel for Friendship*, *supra* note 18, at 43-44; Gray & Varcoe, *supra* note 2, at 10.